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# In the Supreme Court of the United States

**OCTOBER TERM, 1956.**

**No. ~~971~~.**

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TENNESSEE BURLEY TOBACCO GROWERS' ASSOCIATION, *et al.*,

*Petitioners,*

vs.

IVAN RANGE, *et al.*,

*Respondents.*

## BRIEF IN BEHALF OF RESPONDENTS
**In Opposition to Petition for Writ of Certiorari.**

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## BRIEF IN BEHALF OF RESPONDENTS In Opposition to Petition for Writ of Certiorari.

### ADDITIONAL STATEMENT.

The Agricultural Adjustment Act of 1938, and Amendments thereto (7 U. S. C. paragraphs 1301, 1441), were enacted for the purpose of attempting relief to the *producers* of farm commodities.

Commodity Credit Corporation was created (15 U. S. C. Par. 714-714(o)) for the purpose of carrying out the provisions of the Acts of Congress referred to. This Corporation was given powers of appointing agents and entering into contracts for the handling of producers' farm products. In this case, we are dealing with Burley tobacco.

Commodity Credit Corporation by contract carried the legislative program into effect in the field by appointing agents in the Burley Belt, towit, Kentucky, Tennessee, West Virginia, Virginia and North Carolina. These contracts were all on common form, and the ones here involved for the years 1946-49 inclusive, constituted part of the record. The portion of the contract quoted in the petition, page 6, appears in each of these contracts.

The present suit was instituted September 23, 1953 to have distributed to the *growers* of Burley tobacco the gains resulting from the sale of their tobacco for the years referred to. The suit was not instituted by complainants as members of the Association, but as producers of Burley tobacco, in behalf of themselves and all others whose tobacco had been handled by the Association as administering agent.

The enactment of Congress, the contract, the operation of the Association was all for the benefit of growers of tobacco, and not for members of the Association.

(Opinion, Court of Appeals, Appendices to Petition for Certiorari, pp. A19-20, beginning last paragraph.)

## ARGUMENT.

**1. The petition fails to point out any action of the Tennessee Supreme Court that could cause this Court to take jurisdiction for the purpose of review.**

The suit was instituted in the State Court in behalf of the producers to have the Association turn over to the respective producers gains, or profits, that it had made in the handling of their tobacco. The State Courts passed upon this question under the basic law construing the contract, finding that the producers of the tobacco handled were entitled to such gains and that each was entitled to have his share paid to him by the administering agent, the Tennessee Association.

(Appendices to the Petition, A5, A20 and A29.)

That such gains on tobacco handled for producers belong to the growers is admitted by the petitioner, Tennessee Burley Tobacco Growers Association. The answer filed in the present case makes this admission and is quoted in the

opinion of the Court of Appeals, Appendices to Petition, A18, the pertinent part being:

> "After this is done, the equities remaining on hand belong to the tobacco growers who had tobacco taken under the loan."

While the word "equity" is used in the answer, the contract refers to it as "net gains." (Petition for Certiorari, p. 11.)

Nowhere in the legislation, or several Statutes enacted by Congress undertaking to create a plan for improving the price to be received by growers of agricultural products is there any reference, or indication of a purpose to make the Act beneficial to cooperative associations. Nowhere in the contract between Commodity Credit Corporation and the Association is any such intent expressed. On the contrary, the Congress specifically provides that in so far as practicable, the provisions of the Act shall be carried out through the customary channels of trade and commerce. Title 15 U. S. C. A. 714(o). The only reference to cooperative associations is carried in Section 714(j), U. S. C. A. Title 15, wherein the Commodity Credit Corporation is authorized to handle the sale of farm commodities through cooperatives *only on a fee or contract basis.*

There is no intent or purpose expressed in the legislation that the private entity, or the cooperative entity shall have any interest of any character in the proceeds derived from the sale of the farm commodity, whether it be gains or sales price.

The petitioner Association is a corporate entity, organized under the laws of the State of Tennessee, and has very broad powers as such entity to deal in farm products, farm machinery, seeds, grains and allied products in behalf of its *members.* Tennessee Code Ann., Sections 43-

1808, *et seq.* In contracting with Commodity Credit Corporation, it was not discharging a corporate function as a cooperative association, but was acting as an agent. This is clearly established in the opinions of all of the State Courts. (Appendices to Petition for Certiorari, pp. A18-20, A28-29.)

Thus, there would seem to be no Federal question which would invoke the jurisdiction of this Court. There is no showing or suggestion that the State Courts have incorrectly passed upon the contract as a matter of basic law, and it does not follow that the question must be determined by a Federal Court. *Gully v. First National Bank,* 299 U. S. 109; *Shulthis v. McDougal,* 225 U. S. 561; *Briggs v. United Shoe Machinery Co.,* 239 U. S. 48; *Odell v. Farnsworth,* 205 U. S. 501; *Shoshone Mining Co. v. Rutter,* 177 U. S. 505; *Teague v. Brotherhood of Locomotive Firemen & Enginemen,* 127 Fed. 2d 53 (6 Cir.); *Mudd v. Teague,* 220 F. 162 (8 Cir.); *Miller v. Long,* 152 F. 2d 196 (4 Cir.).

**2. The operations or function of cooperatives is not a question here involved.**

The contracts with Commodity by the petitioner Association specifically provide for the manner in which the Association, as contracting agent, will take over the producers' tobacco when it fails to bring the support price, the details of processing, handling and storing and sale of same, and then contains the significant clause referred to in the petition: "All *net gains* accruing from the sale of tobacco upon which Commodity has loaned funds under this agreement shall be distributed on a fair and equitable basis to growers by the Association unless a disposition of such gains other than by distribution to such growers is

requested by the Association and approved by Commodity." (Petition for Certiorari, p. 6.)

Clearly the contracting parties contemplate that the net gains should go to the *producer* whose tobacco had been handled. Commodity had furnished the money to pay for the tobacco, all money required to process, handle and store and sell same, and had even advanced to the Association the money with which to pay overhead expenses.

The record discloses that contracts on the same form had been executed between Commodity and other agencies in the field in the handling of Burley tobacco in Kentucky, Virginia, West Virginia and North Carolina. All those States had distributed the gains to the producers. The Tennessee Association was the only one that failed and refused to do so.

It is asserted as a reason for granting the writ that the decisions of the State Courts will seriously cripple the operation of cooperative marketing associations. Throughout the petition, this theme is presented to the Court. This assertion should have little consideration, as the petitioner Association was not acting in its capacity as a corporate entity, but only acting in behalf of the *producers* of Burley tobacco. It is the farmer, or producer, that Congress expresses by its legislative enactments a desire to benefit, not the Association. All other agencies administering the program under contracts with Commodity of the same character as the contracts here involved, have distributed the gains to the producers who grew the tobacco. Only the Tennessee Association has refused to do so. Its function as a cooperative serving its membership is not here involved, and the State Courts specifically point this out in holding that the gains belong to the producers—not the Association.

**3. The petitioner Association has not exhausted its remedies under the contract to obtain the right to use the net gains.**

The contract provides that such net gains be distributed "unless a disposition of such gains other than by distribution to such growers is requested by the Association and approved by Commodity." (Petition, p. 6.)

No such request was ever made by the Association to Commodity to be permitted to allocate the funds on its records rather than to distribute the gains to the producers. Having failed to comply with the terms of the contract in this respect would seem to preclude the Association from now claiming such right.

The State Courts, in passing upon the questions involved in the present case, were construing the provisions of the contract under the basic law. No Federal question would seem to be involved that would confer jurisdiction upon this Court.

The purpose of Congress, as expressed in the legislation, is to benefit the *producer* of farm commodities. There is no indication of any intention or purpose to further or improve the position of cooperative marketing associations. The case does not involve the operation of the petitioner Association as a cooperative. Its rights and powers to deal with its members are, in no way or manner, impaired by the decision of the State Court.

For the reason set out, we submit that the petition for certiorari should be denied.

Respectfully submitted,

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